

Tennessee Ethics Commission
Minutes – August 26, 2008

The Tennessee Ethics Commission met on August 26, 2008 at 8:30 a.m. in Hearing Room 29 of the Legislative Plaza, Nashville, Tennessee. Present were Commissioners Don Hall, Larry Brown, Linda Knight, Dianne Neal, Ben Purser, and Tom Garland. Due to technical difficulties with the audio equipment, the meeting moved to Hearing Room 31 and Chairman Hall called the meeting to order at 8:50 a.m.

Chairman Hall called for discussion and approval of the July 22 minutes. Commissioner Knight had several corrections to the minutes and these were reviewed. Commissioner Knight moved for the approval of the minutes as corrected and Commissioner Brown seconded. The motion was approved 5-1, with Commissioner Purser opposed.

The Commission commenced consideration of Old Business with the *Nebergall Opinion*. For the purpose of deciding question no. 1 of Mr. Nebergall's request, Commissioner Neal made the motion that, based on the statutory duties and powers in TCA 4-9-101, which includes duties set forth in Nos. 3 and 4 of the staff draft, that when they carry out those duties, they are taking legislative action and they are legislative officials. Commissioner Purser seconded the motion. The motion passed 4-2, with Commissioners Brown and Knight voting no.

The Commission then discussed question no. 2 of the request and Commissioner Purser made the motion that the Commission adopt the draft opinion as prepared by staff, that the person is lobbying and must register. Commissioner Garland seconded the motion. Commissioner Neal stated that she had no problem with the motion, but the answer would be clearer if it began with "yes." Chairman Hall stated that the motion was modified by inserting "yes", with the text following and called for the vote. The motion passed 4-2 with Commissioners Brown and Knight voting no. The Nebergall opinion was subject to the 72 hour rule. Commissioner Knight stated that she would write a separate opinion.

The next item on the agenda considered was the memorandum from Willow Fort, Assistant Counsel, regarding the *incorporation of the penalty grid into rules 0580-1-4, rules pertaining to civil penalties*. Chairman Hall made the motion to increase the penalty amount from \$75 to \$150 if the Commission found the aggravating factor to be that the offender "appears to demonstrate gross disregard or deliberately ignoring requirement" (on page 2 and page 3 of the grid). Commissioner Purser seconded. The motion carried 6-0. Commissioner Knight moved to incorporate the grid into the rule to be adopted about late filing that will give the Commission structure, consistency and flexibility in standards used to impose penalties. Commissioner Garland seconded. Commissioner Brown moved to amend the motion to adopt the grid by adding to all the aggravating and mitigating factors the language "up to or not to exceed" for the presumption of penalties. Commissioners Knight and Garland accepted the amendment to the motion. Motion as modified passed 5-1 with Commissioner Purser voting no.

The Commission discussed the *Assessment Show Cause against Todd Brown and what constitutes "receipt" of a penalty assessment letter*. After consideration, Commissioner Knight made the motion to dismiss this proceeding. Commissioner Hall seconded and the motion passed 6-0.

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General Counsel Himmelreich was asked to research whether unclaimed certified mail constitutes receipt for the next meeting.

New Business:

Items 4 and 5 were considered (assessments).

Item 4: Assessment Show Cause: Local Officials

Tony Adams: Notice was received July 16; no response to date. Staff recommended maximum civil penalty - \$750.00. Commissioner Knight made the motion to accept staff recommendation; Commissioner Purser seconded and the motion passed 6-0.

C.A. Autry: Mr. Autry is deceased and staff recommended the proceeding be dismissed. Commissioner Purser made the motion to accept the recommendation and Commissioner Hall seconded. Motion passed 6-0.

Charlie Cox: Registered mail was unclaimed after 2 delivery attempts; first class mailing was not returned. Staff recommended \$750 penalty. Counsel Himmelreich recommended deferring action for legal analysis of “receipt of notice.” Commissioner Hall made the motion to defer; Commissioner Purser seconded and the motion passed 6-0.

Robert Culp: Mr. Culp filed within five days of receipt of notice. Staff recommended the proceeding be dismissed. Commissioner Purser made the motion and Commissioner (inaudible) seconded. Motion passed 6-0.

Jonathan Dagley: Show Cause notice received on July 16; no response to date. Staff recommended \$750.00 penalty. Commissioner Purser made the motion to accept staff recommendation and Commissioner Knight seconded. Motion passed 6-0.

Kenneth Fisher: Mr. Fisher’s term expired April 2007. Staff recommended proceeding be dismissed. Commissioner (inaudible) made the motion to accept staff recommendation; Commissioner Neal seconded. Motion passed 6-0.

Jimmy Fox: Show Cause notice received on July 16; no response to date. Staff recommended \$750 penalty. Commissioner Purser made the motion to accept staff recommendation; Commissioner Neal seconded and the motion passed 6-0.

Jeffrey Hankins: Show Cause notice received on July 14; no response to date. Staff recommended \$750 penalty. Commissioner Purser moved to accept staff recommendation and Commissioner Hall seconded. Motion carried 6-0.

Derrick Hundley: Show Cause notice received July 14; no response to date. Staff recommended \$750 penalty. Commissioner Hall made the motion to accept staff recommendation and Commissioner Brown seconded. Motion passed 6-0.

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Dennis Jones: Mr. Jones filed late, but before Show Cause notice was mailed. Staff recommended that proceeding be dismissed. Commissioner (inaudible) made the motion to accept staff recommendation and Commissioner (inaudible) seconded. Motion passed 6-0.

Albert Keller: Show Cause notice received July 12. Mr. Keller advised Mr. Woody that the statement was mailed the week of July by another party. Mr. Keller mailed another statement which was received August 5. Staff had no recommendation. Commissioner Purser made the motion to fine Mr. Keller \$450.00. Commissioner (inaudible) seconded. Motion passed 5-1 with Commissioner Neal voting no.

Dean Lay: Show Cause notice was “undeliverable” after 2 attempts. Commissioner Purser moved to defer based on the question of whether he is deemed to having received the notice; Commissioner Hall seconded and the motion passed 6-0.

David Leffew, Sr.: Show Cause notice received on July 15; Mr. Leffew filed that same day. Staff recommended proceeding be dismissed. Commissioner Hall moved to accept recommendation and Commissioner Purser seconded. Motion passed 6-0.

Brad Lowry: Show Cause noticed returned to Commission office marked “UNC” after two delivery attempts. Staff recommended deferring proceeding based on the question of whether he is deemed to having received the notice. Commissioner Knight moved to accept staff recommendation and Commissioner Garland seconded. Motion passed 6-0.

Ronnie Pierce: Show Cause notice received July 14; Mr. Pierce filed that same day. Staff recommended proceeding be dismissed. Commissioner Garland moved to accept staff recommendation and Commissioner Purser seconded. Motion passed 6-0.

Robert Richardson: Show Cause notice sent July 11, “green” card received signed, not dated, by Commission staff on July 17. Staff recommended \$750 penalty. Commissioner Purser moved to accept staff recommendation and Commissioner Hall seconded. Motion carried 6-0.

Samuel Riley: Show Cause notice received July 23; no response to date. Staff recommended \$750 penalty. Commissioner Knight moved to accept staff recommendation and Commissioner Purser seconded. Motion carried 6-0.

Cathy Warner: Warning letter sent June 24; returned to Commission marked “Attempted-Not Known.” Researched showed Cathy Tarrett as councilperson at same address. Warning letter sent July 8. Ms. Tarrett called and advised her statement was filed January 28. Staff recommended proceeding be dismissed. Commissioner Knight moved to dismiss and Commissioner Purser seconded. Motion carried 6-0.

Robert Woods: Show Cause notice received July 15; Mr. Woods filed July 17 within the five day period after receipt. Staff recommended dismissal of proceeding. Commissioner Neal moved to dismiss and Commissioner Purser seconded. Motion carried 6-0.

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Brian Yarber: Show Cause notice sent July 11. Return receipt card has not been returned as of date of meeting. Staff recommended proceeding be deferred. Commissioner Hall moved to defer and Commissioner Purser seconded. Motion carried 6-0.

Items 5: Assessment Show Cause: Employers of Lobbyists

Toyota Motor Engineering & Manufacturing North America: Nathan Ridley spoke on behalf of Toyota. Chairman Hall asked Mr. Androphy to present the case. Mr. Androphy stated that he did not believe Toyota had demonstrated good cause, but mitigating factors were that Toyota did file promptly upon receiving the Show Cause order and also filed the expenditure report. Commissioner Knight moved that Toyota be fined \$400 and Commissioner Purser seconded. Motion carried 6-0.

TN Conference, American University Professors: Commissioner Brown stated that he knows the incoming president of the Conference and recused himself. Mr. Androphy stated that the aggravating factors were that the Conference received at least 3 notices of failing to register after the lobbyist successfully registered in December 2007. The mitigating factor was that the Conference did file upon receiving the Show Cause Notice. He recommended a \$400 penalty. Commissioner Knight made the motion to fine the Conference \$450 and Commissioner Purser seconded. The motion carried 5-0.

TN Mental Health Consumers Association: The Association registered and paid on July 10, the same date the Show Cause notice was received. There was no response to the Show Cause notice. Staff recommended \$450 penalty. Commissioner Purser made the motion to fine the Association \$450; Commissioner Hall seconded. Counsel Himmelreich stated that there was no good cause. The motion passed 6-0.

The Commission discussed *Item 6: Proposed Rules on Electronic Filing*. Commissioner Knight discussed edits she had made to the proposed rules. After further discussion, Chairman Hall directed staff to use their judgment deciding which changes should be made and bring the changes back to the September meeting.

The Commission adjourned for lunch and reconvened at 12:55 p.m.

Chairman Hall discussed the need to establish an audit committee as proposed by the Comptroller's Office. The options to establishing the committee were discussed.

Item 8: Requests for Reconsideration of Fines was considered.

Fresenius: Requested the order be amended to show that Fresenius was represented at Show Cause meetings (paragraph 5 on second page of order). Staff recommended that the Commission grant the request. Commissioner (inaudible) made the motion to grant the request and Chairman Hall seconded. Motion passed 6-0.

People First: Request stated they had attempted on numerous occasions to access website to file report. There is no record of People First contacting the Commission. There was no service

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interruption with the lobby portal. Staff recommended that the request for reconsideration be denied. Commissioner Purser moved to deny the request and Commissioner Brown seconded. Commissioner Knight stated that when we act on a request, we should enter a separate order for the denial and Counsel Himmelreich agreed. Commissioner Brown made the motion that the order denying the request should be short and succinct and Commissioner Purser seconded. Motion passed 6-0.

Clay Enterprises: The request for reconsideration stated that the Commission should have sent prior warning notice by registered mail. Staff countered that there is nothing in statute that requires us to send a pre-show cause notice and that draft sanction rules do not require the Commission to do so. Staff advised that Clay was requesting a contested hearing, but that Clay was relying on a rule that does not deal with late filing or non filing of the expenditure report and that Clay was notified by a letter sent to Clay on December 5 regarding the late filing. Staff recommended denial of the request. Chairman Hall made the motion to deny the request and Commissioner Brown seconded. Motion passed 6-0.

TN Counseling Association: The request for reconsideration stated that the Association did not receive the December 2007 letter notifying it of its failure to timely complete the expenditure report and that the Association had updated its address change at the time of the first filing but that the Commission failed to note the change. The Association did not register in 2008. Counsel Himmelreich noted that the letter from the Association's Executive Director asked for a hearing to contest the assessment. Commissioner Neal moved that this request be deferred subject to counsel reporting to the Commission or the Association filing paperwork for a contested hearing. Commissioner Garland seconded and the motion passed 6-0.

Ronald Bell: Mr. Bell requested reconsideration based on his assertion that he did not receive prior notification to complete the 2008 disclosure of interest statement. Staff recommended that the request be denied and noted that a letter was sent to all filers in December of 2007 and that the letter mailed to Mr. Bell was not returned. Mr. Bell filed in 2007. Commissioner Purser moved to deny the request and Chairman Hall seconded. Motion passed 6-0.

L.J. Cheairs: The County Mayor, Willie Spencer, emailed the Commission explaining that Mr. Cheairs is 82 years old, had difficulty understanding the new changes, and that he has other difficulties and that he has helped Mr. Cheairs come into compliance. Mr. Spencer asked for consideration that the matter be resolved without penalties. Commissioner Neal made the motion to grant the reconsideration and to vacate the penalties previously assessed. Commissioner Garland seconded and the motion passed 5-1, with Commissioner Purser voting no.

The Commissioner considered a *Request of Waiver of Fees* from the *Tennessee AIDS Care and Treatment Improvement Coalition* for the employer of lobbyist and lobbyist registration fee and also for the training fees for lobbyists. Commissioner Knight noted that the draft rules state that the Commission shall not waive the training fee. Commissioner Neal moved that the registration fees be waived and Chairman Hall seconded. Motion passed 6-0.

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Item 10: Hill OR 08-10: Commissioner Knight stated that she agreed with the rationale and outcome of this opinion and moved that it be adopted with her edits. Chairman Hall seconded. Motion passed 6-0.

Item 11: A memorandum on the *Legal Authority to Review and Audit Disclosure of Interest Statements* by Assistant Counsel Willow Fort was considered. Commissioner Neal made the motion that if there is a reasonable suspicion that major omissions or deficiencies in the disclosure appear, then and only then, do we contact the individual whose statement it is and attempt to get clarification or cure the deficiency. Commissioner Knight seconded. After discussion, Commissioner Garland stated that with the amount of interest and discussion generated, he requested that the sponsor withdraw the motion and Commissioner Neal agreed to withdraw her motion. Commissioner Garland noted that the Attorney General's office received appropriations in 2006-2007 to create additional positions in anticipation of referrals from the Commission. He requested that the Chairman and the Executive Director meet with Finance and Administration Commissioner Dave Goetz, State Budget Director Bill Bradley and a representative from the Attorney General's office to see what happened to these positions.

Chairman Hall stated that his last day as chair will be October 22, 2008. He will chair the September meeting and at that time the Commission should select the new chair. The new chair will preside at the October 28 meeting.

Mr. Androphy introduced Stephen Copeland and asked the Commission to approve the hiring of Mr. Copeland as the Assistant Ethics Compliance Officer. Chairman Hall moved that Mr. Copeland be offered the position and Commissioner Purser seconded. Motion passed 6-0.

Mr. Androphy informed the Commission that staff had uncovered information that would lend support to send Show Cause notices to lobbyists who have made campaign contributions to statewide candidates. Counsel Himmelreich stated that the information is based on public filings. Chairman Hall made the motion to issue Show Cause notices and Commissioner Garland seconded. Motion passed 6-0.

The meeting adjourned at 2:58 p.m.